



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 23, 2004

Mr. G. Chadwick Weaver  
First Assistant City Attorney  
City of Midland  
P. O. Box 1152  
Midland, Texas 79702-1152

OR2004-2186

Dear Mr. Weaver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197959.

The Midland Police Department (the "department") received a request for a specified arrest and booking report. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime. . . if. . . release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that "[p]rosecution of the crime which forms the basis for the information contained in Exhibit 'B' is still pending." Based upon this representation and our review of the submitted information, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime, and therefore, that section 552.108(a)(1) is applicable to this information. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd*

*n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, that section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d at 185. Thus, with the exception of the basic front page offense and arrest information, you may withhold the submitted information from disclosure based on section 552.108 of the Government Code. We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

We also note, however, that basic information under section 552.108(c) includes an arrestee's social security number. *See Houston Chronicle*, 531 S.W.2d at 187; Open Records Decision No. 127 at 3 (1976). Therefore, the arrestees' social security numbers cannot be withheld from disclosure under section 552.108. You claim, however, that the social security numbers at issue fall under the federal Social Security Act because they were obtained pursuant to section 411.086 of the Government Code. In this regard, we note that section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by other statutes. Social security numbers and related records are excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if the social security number information was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Section 411.086 of the Government Code contemplates rules that the Department of Public Safety ("DPS") shall adopt in regard to requests for criminal history information. Section 411.086(b)(2) states that such rules "may require a person requesting criminal history information about an individual to submit to [DPS] one or more of the following: . . . (E) any known identifying number of the individual, including social security number . . . ."

While you state that the collection of social security numbers "by police officers helps establish identities of criminals," you do not specifically state whether the department obtained or maintained the social security number at issue in order to request criminal history information from DPS. Moreover, you do not inform us as to whether DPS actually requires or required the department to submit the social security number at issue in order to request criminal history information. We find that if the department obtained or maintains the social security numbers at issue in order to request criminal history information from DPS, and if DPS actually requires or required the department to submit the social security number with its request for criminal history information, then the social security numbers at issue are confidential under section 411.086 of the Government Code in conjunction with federal law. However, if this is not in fact the case, this social security numbers of arrestees must be released.

In summary, we conclude that except for basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. We also conclude that the social security numbers within the submitted report may be excepted under section 552.101 in conjunction with federal law.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

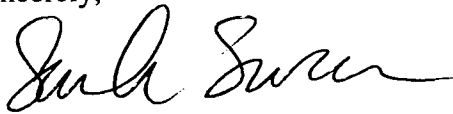
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Swanson", written in a cursive style.

Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/lmt

Ref: ID# 197959

Enc. Submitted documents

c: Mr. Barry Taylor  
Department of Children & Families  
Background Screening  
P. O. Box 2417  
Jacksonville, FL 32231-0083  
(w/o enclosures)